

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SKYLINE SOFTWARE SYSTEMS,)
INC.,)

Plaintiff,)

v.)

KEYHOLE, INC. AND GOOGLE)
INC.,)

Defendants,)

Case Nos. 06-CV-10980 DPW

MOTION FOR RELEASE FROM PROTECTIVE ORDER AND ORDER OF COURT

Skyline Software Systems, Inc. ("Skyline") moves this Court for an Order releasing certain confidential information from the Stipulated Protective Order and states the following to support this Motion:

1. Skyline owns U.S. Patent No. 6,496,189 ("the '189 Patent") which was the subject of two patent infringement lawsuits before this court: (1) Case 1:04-cv-11129-DPW, *Skyline Software Systems, Inc. v. Keyhole Corporation* filed May 28, 2004; and (2) Case 1:06-cv-10980-DPW, *Skyline Software Systems, Inc. v. Keyhole, Inc. et al.* filed June 5, 2006 ("Skyline-Google Litigations"). These cases were consolidated on November 27, 2006.

2. On May 22, 2006, Judge Douglas P. Woodlock issued a Stipulated Protective Order (Dckt. No. 99) in Case No. 04-cv-11129-DPW. This protective order also applied to consolidated Case No. 06-CV-10980-DPW.

3. During the course the Skyline-Google Litigations, pleadings and corresponding exhibits were filed under seal pursuant to the terms of the Protective Order. The Skyline-Google Litigations were ultimately resolved through a settlement.

4. On December 31, 2009, Skyline filed suit against Environmental Systems Research Institute, Inc., ("ESRI") in the United States District Court for the Eastern District of Virginia, 2:09-cv-00632-RAJ-FBS, for infringement of U.S. Patent No. 7,551,172 B2 ("the '172 Patent"). The '172 Patent is related to the '189 Patent which was asserted in the Skyline-Google Litigations.

5. On April 22, 2010, ESRI answered Skyline's complaint and asserted a counterclaim for unenforceability of the '172 Patent. ESRI's counterclaim was based in part on pleadings and corresponding exhibits that were filed under seal in the Skyline-Google Litigations.

6. Skyline asked Google to provide copies of the relevant documents filed under seal in the Skyline-Google Litigations. However, Google has refused to provide copies of the following three documents, which were filed under seal, citing the provisions of the protective order ("the Skyline Memoranda"):

- Plaintiff Skyline Software Systems, Inc.'s Memorandum in Support for Its Motion for Summary Judgment of Validity, Dckt. No. 51, Case 1:06-cv-10980-DPW;
- Plaintiff Skyline Software Systems, Inc.'s Memorandum in Support for Its Motion for Summary Judgment of Infringement, Dckt. No. 49, Case 1:06-cv-10980-DPW;
- Plaintiff Skyline Software Systems, Inc.'s [Proposed] Reply Memorandum in Support of Motion for Preliminary Injunctive Relief, Dckt. Nos. 86-90, Case 1:04-cv-11129-DPW.

7. Notably, the Skyline Memoranda were filed by Skyline, not Google.

8. On November 4, 2010, Skyline's counsel from the Skyline-Google Litigations confirmed that: (1) the reason the Memorandum in Support of Skyline's Motion for Summary Judgment of Validity was filed under seal was due to Skyline's quotation in the memorandum of deposition testimony which was designated by Google in its totality as Highly Confidential; and

(2) the reason the Reply Memorandum to Support its Motion for Preliminary Injunction was filed under seal was due to Skyline's discussion of the contents of the declaration Mr. Michael Jones, a Google employee, which was also filed by Google under seal.

9. The third memorandum, Skyline's Memorandum in Support of its Motion for Summary Judgment of Infringement, contains Google confidential information because it discusses Skyline's position that the accused Google product infringes the '189 Patent, which presumably involved a citation and discussion of Google's confidential information.

10. Since that time, the litigation between Skyline and ESRI has been resolved.

11. As outlined above, Skyline's counsel has conferred and has attempted in good faith to resolve and/or narrow these issues with both Google and Skyline's former litigation counsel. Accordingly, Skyline's counsel certifies that Local Rule 7.1(a)(2) has been met.

12. Skyline intends to continue to enforce its rights in the '172 Patent. The Skyline Memoranda will be potentially relevant to the subject matter of future enforcement actions.

13. On November 8, 2010, Skyline contacted Google's litigation counsel and requested Google to produce to Skyline copies of the Skyline Memoranda. On November 18, 2010, Google's counsel informed Skyline that Skyline would either need to seek relief from the protective order or subpoena Google.

14. For the reasons stated above, Skyline respectfully requests this Court enter an order releasing from the Protective Order the confidential designations for the Skyline Memorandums.

Date: December 13, 2010

Respectfully submitted,

/s/ Anna B. Folgers
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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to Local Rule 7.1(A)(2), on January 18, 2007, Geri L. Haight, counsel for Skyline, conferred in good faith with Darryl M. Woo, counsel for Google in a good faith effort to resolve or narrow the issues presented in this Motion. The parties were unable to do so.

Date: December 13, 2010

/s/ Anna B. Folgers
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CERTIFICATE OF SERVICE

I hereby certify that on the December 13, 2010, the foregoing **MOTION FOR RELEASE FROM PROTECTIVE ORDER AND ORDER OF COURT** was filed through the ECF system. However, because this consolidated case is closed, the foregoing was also served via first class mail, and also via email, on the following interested parties:

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_____/s/ Anna B. Folgers_____